

Bill No. SB 2062

Barcode 463214    Comm: RCS    04/18/2006 06:07 PM

601-2229-06

Proposed Committee Substitute by the Committee on General  
Government Appropriations

1                            A bill to be entitled

2            An act relating to environmental permitting;

3            amending s. 373.4145, F.S.; requiring the

4            Northwest Florida Water Management District and

5            the Department of Environmental Protection to

6            jointly develop rules for the regulation of

7            certain activities related to stormwater

8            management systems and the management and

9            storage of surface waters; requiring the

10           district and the department to streamline

11           federal and state wetland permitting programs

12           and to implement such measures; requiring

13           certain exemptions and provisions for rules

14           relating to certain dwellings; requiring the

15           department and the district to enter into an

16           operating agreement for the implementation of

17           certain provisions; requiring the district to

18           be responsible for the regulation and local

19           delegation of certain activities; repealing

20           certain provisions upon the adoption of rules;

21           removing a repealer provision; providing an

22           appropriation; providing an effective date.

23

24 Be It Enacted by the Legislature of the State of Florida:

25

26            Section 1.    Section 373.4145, Florida Statutes, is

27 amended to read:

28            373.4145    Part    ~~Interim part~~ IV permitting program

29 within the geographical jurisdiction of    ~~for~~ the Northwest

30 Florida Water Management District.--

31            (1)    Within the geographical jurisdiction of the

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Northwest Florida Water Management District, taking into consideration the differing physical and natural characteristics of the area, the department and the district shall the permitting authority of the department under this part shall consist solely of the following, notwithstanding the rule adoption deadline in s. 373.414(9):

(a) Jointly develop rules to regulate the construction, operation, alteration, maintenance, abandonment, and removal of stormwater management systems. The department shall adopt the rules by January 1, 2007. The district may implement the department's rules without adoption pursuant to s. 120.54. Until the rules for stormwater management systems take effect, chapter 62-25 Chapter 17-25, Florida Administrative Code, shall remain in full force and effect, and shall be implemented by the department. Notwithstanding the provisions of this section, chapter 62-25 17-25, Florida Administrative Code, may be amended by the department as necessary to comply with any requirements of state or federal laws or regulations, or any condition imposed by a federal program, or as a requirement for receipt of federal grant funds. The intent of these rules is to modify the stormwater rules to improve water quality and flood protection. This objective may be accomplished by applying comparable measures and criteria adopted by the other water management districts which are appropriate considering the differing physical and natural character of the area.

(b) Jointly develop rules for the management and storage of surface waters under this part. The department shall adopt the rules by January 1, 2008. Pursuant to s. 120.54, the district may implement the department's rules before the rules are adopted. Until the rules for the

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1 management and storage of surface waters under this part take  
2 effect, rules adopted pursuant to the authority of ss.  
3 403.91-403.929, 1984 Supplement to the Florida Statutes 1983,  
4 as amended, in effect prior to July 1, 1994, shall remain in  
5 full force and effect, and shall be implemented by the  
6 department. However, the department is authorized to  
7 establish additional exemptions and general permits for  
8 dredging and filling, if such exemptions or general permits do  
9 not allow significant adverse impacts to occur individually or  
10 cumulatively. However, for the purpose of chapter 62-312  
11 ~~17-312~~, Florida Administrative Code, the landward extent of  
12 surface waters of the state identified in rule 62-312.030(2)  
13 ~~17-312.030(2)~~, Florida Administrative Code, shall be  
14 determined in accordance with the methodology in rules  
15 62-340.100 through 62-340.600 ~~17-340.100 through 17-340.600~~,  
16 Florida Administrative Code, ~~as ratified in s. 373.4211, upon~~  
17 ~~the effective date of such ratified methodology~~. In  
18 implementing s. 373.421(2), the department shall determine the  
19 extent of those surface waters and wetlands within the  
20 regulatory authority of the department as described in this  
21 paragraph. At the request of the petitioner, the department  
22 shall also determine the extent of surface waters and wetlands  
23 that ~~which~~ can be delineated by the methodology ratified in s.  
24 373.4211, but that ~~which~~ are not subject to the regulatory  
25 authority of the department as described in this paragraph.  
26 The intent of these rules is to preserve property interests  
27 while improving the management and storage of surface waters.  
28 The scope of these rules must recognize the historically rural  
29 nature, current development trends, and the abundant natural  
30 resources of the district, and the permitting thresholds and  
31 requirements must reflect this distinction.

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1       (c) Pursue streamlining of the federal and state  
 2 wetland permitting programs pursuant to ss. 373.4143 and  
 3 373.4144.

4       (d) Implement, to the maximum extent possible,  
 5 streamlining measures, including electronic permitting, field  
 6 permitting, and certification programs for activities having  
 7 minimal individual or cumulative impact, informal wetland  
 8 determinations, and other similar measures.

9       (2)(c) The department may implement chapter 40A-4,  
 10 Florida Administrative Code, in effect prior to July 1, 1994,  
 11 pursuant to an interagency agreement with the Northwest  
 12 Florida Water Management District adopted under s. 373.046(4).

13       (3) The rules adopted under subsection (1), as  
 14 applicable, shall:

15       (a) Incorporate the exemptions in ss. 373.406 and  
 16 403.813(2).

17       (b) Incorporate the provisions of rule  
 18 62-341.475(1)(f), Florida Administrative Code, applicable to  
 19 single-family homes located entirely or partially within  
 20 wholly owned, isolated wetlands.

21       (c) Exempt from the notice and permitting requirements  
 22 of this part the construction or private use of a  
 23 single-family dwelling unit, duplex, triplex, or quadruplex  
 24 that:

25       1. Is not part of a larger common plan of development  
 26 or sale proposed by the applicant.

27       2. Does not involve wetlands or other surface waters.

28       (d) At a minimum and taking into consideration the  
 29 physical and natural character of the area, incorporate the  
 30 exemptions and general permits under this part in effect  
 31 elsewhere in the state. These rules shall exempt resurfacing

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1 or paving of unpaved roads consistent with the exemptions in  
2 s. 403.813(2).

3 (e) Exempt from the rule criteria under paragraph  
4 (1)(b) the alteration of wholly-owned, artificially created  
5 surface waters created entirely from uplands that do not  
6 connect to waters of the state, except for those created for  
7 the purpose of providing mitigation under this part.

8 ~~(2) The authority of the Northwest Florida Water~~  
9 ~~Management District to implement this part or to implement any~~  
10 ~~authority pursuant to delegation by the department shall not~~  
11 ~~be affected by this section. The rule adoption deadline in s.~~  
12 ~~373.414(9) shall not apply to said district.~~

13 ~~(4)(3)~~ The department and division of permitting  
14 responsibilities in s. 373.046(4) shall not apply within the  
15 geographical jurisdiction of the Northwest Florida Water  
16 Management District shall enter into an operating agreement  
17 under s. 373.046 to effectively implement this section and  
18 provide the district with the amount of responsibility under  
19 the agreement which resources allow, including, at a minimum,  
20 the responsibility for regulating silviculture and  
21 agriculture. The operating agreement shall encourage local  
22 delegation of the responsibilities under this section pursuant  
23 to s. 373.441.

24 (5) The provisions of s. 373.414(11)-(14) do not apply  
25 to rules adopted under this section.

26 (6) The following activities shall continue to be  
27 governed by the provisions of s. 373.4145, Florida Statutes,  
28 1994:

29 (a) The operation and routine custodial maintenance of  
30 activities legally in existence before the effective date of  
31 the rules adopted under subsection (1), as long as the terms

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and conditions of the permit, exemption, or other  
authorization for such activities continue to be met.

(b) The activities approved in a permit issued  
pursuant to s. 373.4145, Florida Statutes 1994, and the review  
of activities proposed in applications received and completed  
before the effective date of the rules adopted under  
subsection (1), as applicable. This paragraph applies to any  
modification of the plans, terms, and conditions of a permit  
issued pursuant to s. 373.4145, Florida Statutes 1994, which  
lessens the environmental impact, except any such modification  
may not extend the time limit for construction beyond 2  
additional years.

This subsection does not apply to any activity that is  
altered, modified, expanded, abandoned, or removed after  
adoption of the applicable rules under subsection (1).

(7) Unless the petitioner elects to apply rule 62-340,  
Florida Administrative Code, to all wetlands, the delineation  
of the landward extent of wetlands and other surface waters  
for petitions filed under s. 373.421(2) before the effective  
date of the rules adopted under paragraph (1)(b) shall  
continue to be determined in accordance with rule  
62-312.030(2), Florida Administrative Code, in effect July 1,  
1994, and rules 62-340.100 through 62-340.600, Florida  
Administrative Code, as ratified in s. 373.4211.

~~(4) If the United States Environmental Protection~~  
~~Agency approves an assumption of the federal program to~~  
~~regulate the discharge of dredged or fill material by the~~  
~~department or the water management districts, or both,~~  
~~pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500,~~  
~~as amended, 33 U.S.C. ss. 1251 et seq.; the United States Army~~

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1 ~~Corps of Engineers issues one or more state programmatic~~  
2 ~~general permits under the referenced statutes; or the United~~  
3 ~~States Environmental Protection Agency or the United States~~  
4 ~~Corps of Engineers approves any other delegation of regulatory~~  
5 ~~authority under the referenced statutes, then the department~~  
6 ~~may implement any permitting authority granted in this part~~  
7 ~~within the Northwest Florida Water Management District which~~  
8 ~~is prescribed as a condition of granting such assumption,~~  
9 ~~general permit, or delegation.~~

10       (8)(5) Within the geographical jurisdiction of the  
11 Northwest Florida Water Management District, the methodology  
12 for determining the landward extent of surface waters of the  
13 state under chapter 403 in effect prior to the effective date  
14 of the methodology ratified in s. 373.4211 shall apply to:

15       (a) Activities permitted under the rules adopted  
16 pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida  
17 Statutes 1983, as amended, or which were exempted from  
18 regulation under such rules, prior to July 1, 1994, and which  
19 were permitted under chapter 62-25 ~~17-25~~, Florida  
20 Administrative Code, or exempt from chapter 62-25 ~~17-25~~,  
21 Florida Administrative Code, prior to July 1, 1994, provided:

22           1. An activity authorized by such permits is conducted  
23 in accordance with the plans, terms, and conditions of such  
24 permits.

25           2. An activity exempted from the permitting  
26 requirements of the rules adopted pursuant to ss.  
27 403.91-403.929, 1984 Supplement to the Florida Statutes 1983,  
28 as amended, or chapter 62-25 ~~17-25~~, Florida Administrative  
29 Code, is:

30           a. Commenced prior to July 1, 1994, and completed by  
31 July 1, 1999;

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1           b. Conducted in accordance with a plan depicting the  
2 activity which has been submitted to and approved for  
3 construction by the department, the appropriate local  
4 government, the United States Army Corps of Engineers, or the  
5 Northwest Florida Water Management District; and

6           c. Conducted in accordance with the terms of the  
7 exemption.

8           (b) An activity within the boundaries of a valid  
9 jurisdictional declaratory statement issued pursuant to s.  
10 403.914, 1984 Supplement to the Florida Statutes 1983, as  
11 amended, or the rules adopted thereunder, in response to a  
12 petition received prior to June 1, 1994.

13           (c) Any modification of a permitted or exempt activity  
14 as described in paragraph (a) which does not constitute a  
15 substantial modification or which lessens the environmental  
16 impact of such permitted or exempt activity. For the purposes  
17 of this section, a substantial modification is one that ~~which~~  
18 is reasonably expected to lead to substantially different  
19 environmental impacts.

20           (d) Applications for activities permitted under the  
21 rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement  
22 to the 1983 Florida Statutes, as amended, which were pending  
23 on June 15, 1994, unless the application elects to have  
24 applied the delineation methodology ratified in s. 373.4211.

25           (9) Subsections (2) and (8) are repealed on the date  
26 the rules adopted pursuant to subsection (1) take effect.

27           (10) If the Legislature fails to fund and staff the  
28 environmental resource permitting program established under  
29 this section in any fiscal year, the environmental resource  
30 permitting program shall be suspended for that fiscal year and  
31 the rules and statutes governing development activity in the



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1 district shall revert to those in effect on April 1, 2006,  
2 until such time as funding and staffing levels are restored  
3 consistent with this section.

4 ~~(6) Subsections (1), (2), (3), and (4) shall be~~  
5 ~~repealed effective July 1, 2006.~~

6 Section 2. The sum of \$2,418,816 in recurring funds  
7 and \$525,000 in nonrecurring funds are appropriated from the  
8 General Revenue Fund in the Department of Environmental  
9 Protection as a transfer to the Northwest Florida Water  
10 Management District for the 2006-2007 fiscal year. Funds are  
11 provided in order to implement the environmental resource  
12 permitting program authorized by s. 373.4145, Florida  
13 Statutes.

14 Section 3. This act shall take effect July 1, 2006.

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